



**Public Hearing  
CITY OF AUSTIN  
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.:** 65  
**AGENDA DATE:** Thu 04/28/2005  
**PAGE:** 1 of 3

**SUBJECT:** Conduct a public hearing to consider a variance request by Garrett Quinn to allow remodeling, construction of a second story addition and expansion of the carport on an existing house encroaching on the 25-year and 100-year floodplain of the Hancock Branch of Shoal Creek at 2608 Great Oaks Parkway.

**AMOUNT & SOURCE OF FUNDING:** N/A

**FISCAL NOTE:** N/A

**REQUESTING** Watershed Protection and **DIRECTOR'S**  
**DEPARTMENT:** Development Review **AUTHORIZATION:** Joe Pantalio

**FOR MORE INFORMATION CONTACT:** Ray Windsor, 974-3362; Gary Kosut, 974-3374; Ruth O., 974-2501

**PRIOR COUNCIL ACTION:** N/A

**BOARD AND COMMISSION ACTION:** N/A

**PURCHASING:** N/A

**MBE / WBE:** N/A

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The applicant, Mr. Jim Bennett, on behalf of the property owners, Mr. and Mrs. Garrett Quinn, submitted a building permit application (BP-04-9260RA) for new construction of a second story above the existing split-level house, remodeling of the existing house, and expansion of the existing carport. A portion of the house encroaches on the 25-year floodplain of Hancock Branch. The existing house is a nonconforming use, i.e. it was lawful when constructed.

The existing lowest floor of the house is lower than the Land Development Code requirement for elevation above the floodplain. Because the applicant proposes substantial improvements to the house, the original house must be brought into compliance with respect to the elevation requirement. City Code provides that a nonconforming use may continue only if it is not "expanded, changed, enlarged, or altered in a way which increases its nonconformity", and that no substantial improvement of the structure shall be made "unless the structure is changed to conform to these floodplain regulations". Substantial Improvement is defined as an improvement for which the cost "equals or exceeds 50% of the market value of the structure before construction of the improvement," Section 25-12-3, Building Code, Appendix Chapter 59, Section 5903 (Nonconforming Uses).

The proposed construction constitutes a substantial improvement. The owners do not wish to comply with City Code requirements that the existing structure be changed to conform with floodplain regulations by elevating the lowest floor and have been denied a building permit. The proposed construction will require a variance from the floodplain management regulations of the City of Austin in order for the project to be able to receive a building permit. Proposed as a second story, the addition will be elevated



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above the Regulatory Flood Datum (RFD, the 100-year floodplain elevation plus one foot).

**THE WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPARTMENT  
RECOMMENDS DENIAL OF THIS VARIANCE REQUEST.**

**APPLICABLE CODE:**

**Section 25-7-92(A)** prohibits encroachment of a building or parking area on the 25-year floodplain.

The existing house encroaches on the 25-year and 100-year floodplain. Because this property qualifies for the exception of a single structure in the 100-year floodplain on a lot platted prior to September 25, 1983, the variance is required only for the 25-year floodplain encroachment.

**Section 25-12-3**, Local Amendments to the Building Code Appendix Chapter 59, Section 5903 (Nonconforming Uses) reads as follows:

A structure, or the use of a structure or premises, which was lawful before the adoption this chapter, but which does not conform with the requirements of these regulations, may be continued subject to the following conditions:

1. No such use shall be expanded, changed, enlarged, or altered in a way which increases its nonconformity.
2. No substantial improvement of the structure shall be made unless the structure is changed to conform with these regulations.

The proposed construction will increase the nonconformity of the house by the continuance of the existing, subelevated foundation causing the potential for increased cost of flood insurance claims. The cost of the proposed construction exceeds 50% of the house's market value, consequently the existing house must conform with floodplain regulations by raising the floor elevation of the existing house by 0.3 foot.

The floor elevation of the existing house is at 602.96 feet above mean sea level. The 100-year flood level is at 602.3 feet, meaning that the RFD is 603.3 feet.

**Section 25-7-152** requires the dedication of drainage easement to the extent of the 100-year floodplain.

If Council approves this variance request, the Watershed Protection and Development Review Department recommends limiting this variance request so that the requirement to dedicate a drainage easement to the limits of the 100-year floodplain is waived only as to the footprint of the house and addition/extension.

**VARIANCE PROCEDURES:**

The City Council shall hear and render judgment on requests for variances from the floodplain management regulations. Variances shall not be issued within any designated floodway (25-year floodplain) if any increase in flood levels during the base flood (100-year flood) discharge would result. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below



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the base flood level, providing relevant factors have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases. The relevant factors to be considered are:

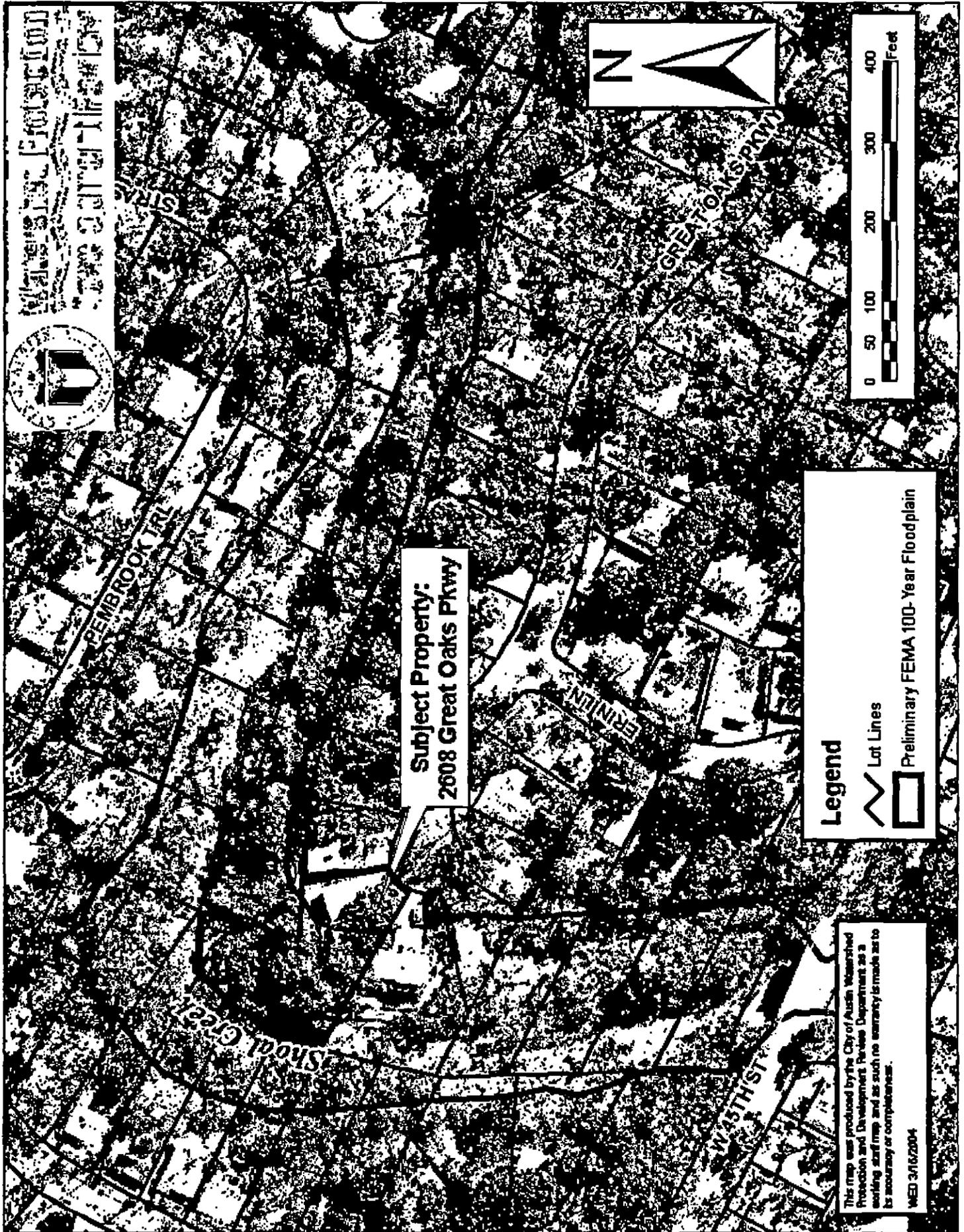
1. The danger to life and property due to flooding or erosion damage;
2. The susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual owner;
3. The danger that materials may be swept onto other lands to the injury of others;
4. The compatibility of the proposed use with existing and anticipated development;
5. The safety of access to the property during times of flood for ordinary and emergency vehicles;
6. The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
7. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site;
8. The necessity to the facility of a waterfront location, where applicable;
9. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
10. The relationship of the proposed use to the comprehensive plan for the area.

## **Backup Information Packet**

Conduct a public hearing to consider a variance request to allow remodeling of the existing house and construction of a second story addition. The existing house encroaches the 25-year and 100-year floodplains of the Hancock Branch of Shoal Creek at 2608 Great Oaks Parkway. (Suggested date and time: April 28, 2005, at 6:00 p.m.)

- Site Location Map for 2608 Great Oaks Parkway.
- Floodplain Variance Procedures.
- Photograph of the existing house at 2608 Great Oaks Parkway
- Photograph of the existing house at 2608 Great Oaks Parkway
- Photograph of the existing house at 2608 Great Oaks Parkway

# Location Map for 2608 Great Oaks Parkway Drive



## **2. FLOODPLAIN VARIANCE PROCEDURES**

Building Code, Appendix Chapter 58, Article 8 outlines procedures for consideration of flood plain development and evaluation of variance requests.

### **PREREQUISITES FOR GRANTING VARIANCES:**

Variances shall only be issued upon:

- 1) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- 2) Showing a good and sufficient cause;
- 3) A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
- 4) A determination that granting a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing local laws or ordinances.

### **VARIANCE PROCEDURES:**

The City Council shall hear and render judgement on requests for variances from the flood plain management regulations. Variances shall not be issued within any designated floodway (25-year floodplain) if any increase in flood levels during the base flood (100-year flood) discharge would result. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing relevant factors have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases. The relevant factors to be considered are:

- 1) The danger to life and property due to flooding or erosion damage;
- 2) The susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual owner;
- 3) The danger that materials may be swept onto other lands to the injury of others;
- 4) The compatibility of the proposed use with existing and anticipated development;
- 5) The safety of access to the property during times of flood for ordinary and emergency vehicles;
- 6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
- 7) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site;
- 8) The necessity to the facility of a waterfront location, where applicable;
- 9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- 10) The relationship of the proposed use to the comprehensive plan for the area.

Photograph of existing house at 2608 Great Oaks Parkway



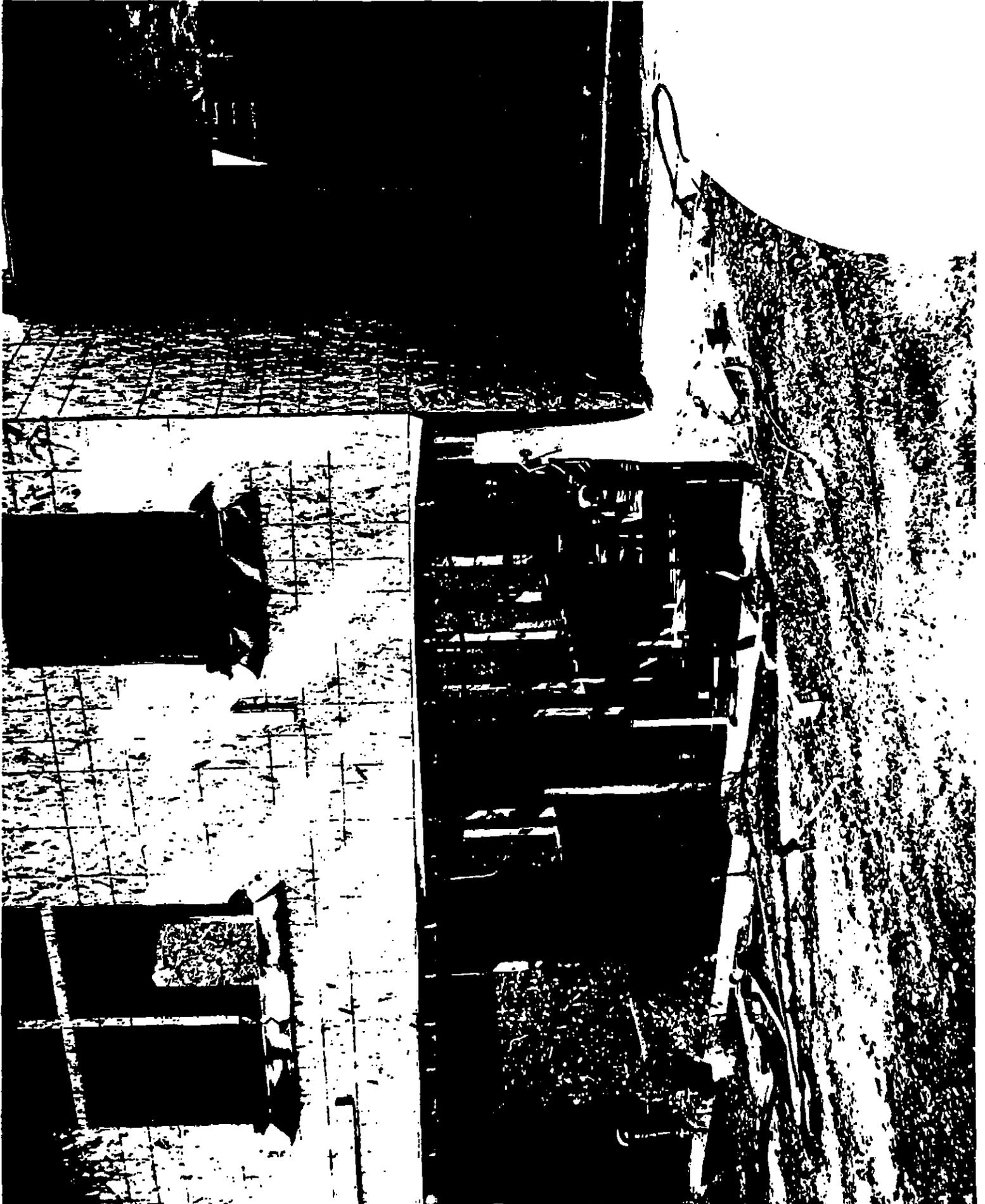
**Approximate Regulatory Flood Datum (RFD)**

**Approximate 100-year Flood level**

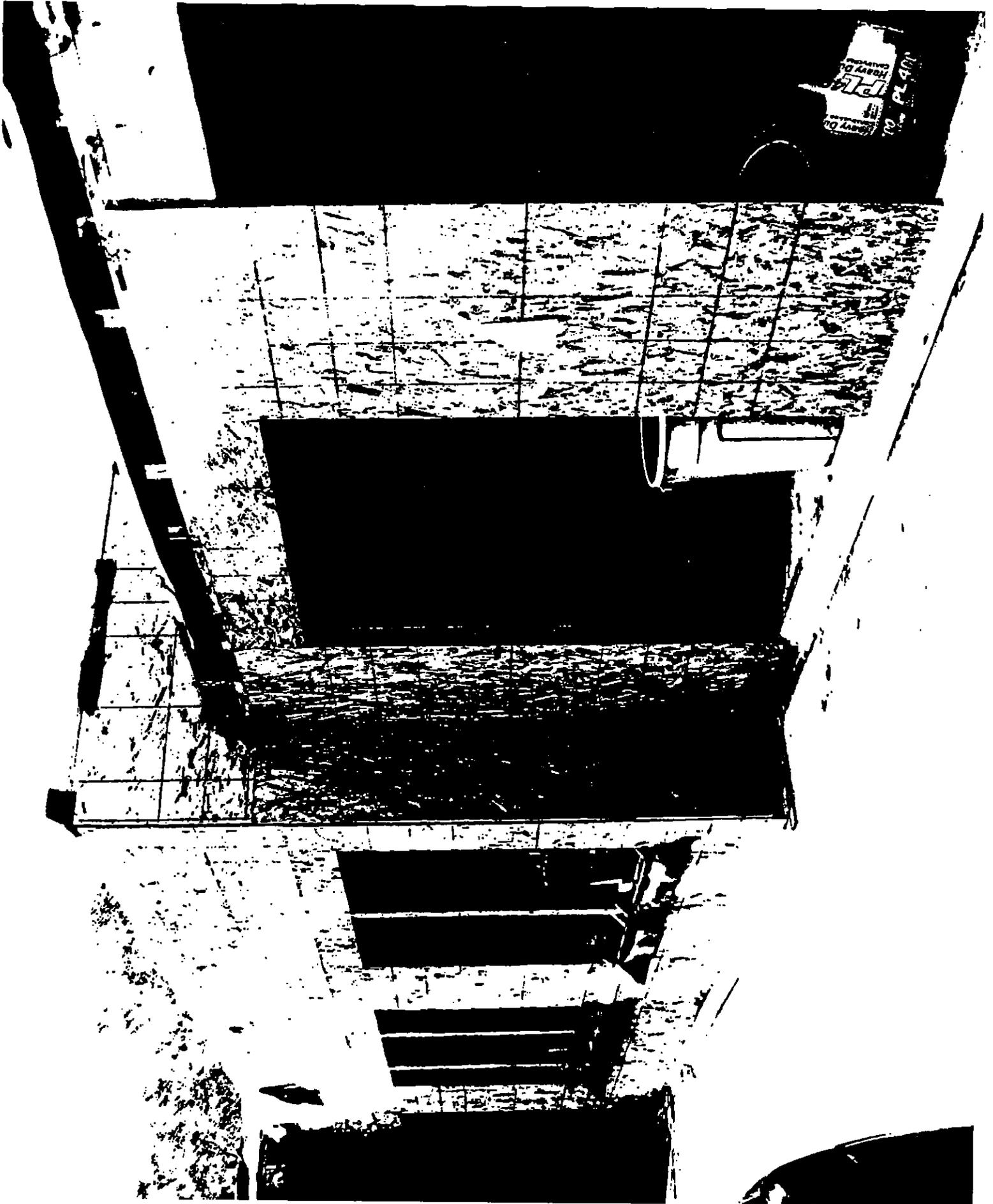
**Approximate 25-year Flood Level**



Photograph of existing house at 2608 Great Oaks Parkway



Existing house at 2608 Great Oaks Parkway



# DEPARTMENT RECOMMENDS DENIAL

## ORDINANCE NO.

**AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT 2608 GREAT OAKS PARKWAY FROM CERTAIN FLOODPLAIN REGULATIONS PRESCRIBED BY THE CITY CODE FOR REMODELING AN EXISTING HOUSE AND CONSTRUCTION OF A SECOND STORY ADDITION IN THE 25 AND 100-YEAR FLOODPLAIN; AND PROVIDING AN EXPIRATION FOR THE VARIANCES.**

### **BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** Council has considered the factors for granting a variance from floodplain regulations prescribed by Section 25-12-3 (*Local Amendments to the Building Code*), Appendix Chapter 58, Article 8, Subsection D (*Variance Procedures*) of the City Code. Council finds that the variance granted by this ordinance is the minimum necessary to afford relief, is based on good and sufficient cause, and failure to grant the variance would result in exceptional hardship. Council further finds that the variance granted in this ordinance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

**PART 2.** This ordinance applies to the remodeling, construction of a second story addition, and expansion of the carport on an existing house at 2608 Great Oaks Parkway within the 25 and 100-year floodplain, subject to Building Permit Application No. BP-04-9260RA.

**PART 3.** A variance is granted from:

- (A) the restriction on construction in the 25-year floodplain prescribed by Section 25-7-92(A) (*Encroachment On Floodplain Prohibited*) of the City Code; and
- (B) Section 25-7-152 (*Dedication of Easements and Rights-of-Way*) of the City Code to exclude the house and addition from the requirement to dedicate an easement to the limits of the 100-year floodplain; and
- (C) the requirement that the lowest floor of a residential structure be elevated one foot above the 100-year floodplain prescribed by Section 25-12-3,

Building Code Appendix Chapter 58, Article 9B(1) (*Provisions for Flood Hazard Reduction*) of the City Code; and

- (D) the requirement that a structure may not be expanded, changed, enlarged, or altered in any way which increases its nonconformity prescribed in Section 25-12-3, Building Code Appendix Chapter 59, Section 5903 (*Nonconforming Uses*) of the City Code.

**PART 4.** If the project for which this variance is granted does not receive all necessary building permits on or before May 9, 2006, this variance expires.

**PART 5.** Approval of this variance does not constitute approval of zoning, subdivision, a site plan, a building permit, or any other development permit, and it does not constitute a commitment to any particular land use, intensity of land use, or utility services. Approval of this variance does not constitute a guarantee of flood insurance availability, rates, or requirements.

**PART 6.** This ordinance takes effect on \_\_\_\_\_, 2005.

**PASSED AND APPROVED**

\_\_\_\_\_, 2005

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\_\_\_\_\_  
Will Wynn  
Mayor

**APPROVED:** \_\_\_\_\_  
David Allan Smith  
City Attorney

**ATTEST:** \_\_\_\_\_  
Shirley A. Brown  
City Clerk